



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S33-ATG-12 [v.1]

Page 1 of 2

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Date _____, 2011

Senator Clodfelter

1 moves to amend the bill on page 3, line 37 through page 4, line 38, by rewriting those lines to
2 read:

3 **"§ 1-289. Undertaking to stay execution on money judgment.**

4 (a) If the appeal is from a judgment directing the payment of money, it does not stay the
5 execution of the judgment unless a written undertaking is executed on the part of the appellant,
6 by one or more sureties, as set forth in this section.

7 (a1) In an action where the judgment directs the payment of money, the court shall
8 specify the amount of the undertaking required to stay execution of the judgment pending
9 appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be to the
10 effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is
11 dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of
12 such amount as to which the judgment shall be affirmed, if affirmed only in part, and all
13 damages which shall be awarded against the appellant upon the appeal, except as provided in
14 subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that
15 since the execution of the undertaking the sureties have become insolvent, the court may, by
16 rule or order, require the appellant to execute, file and serve a new undertaking, as above. In
17 case of neglect to execute such undertaking within twenty days after the service of a copy of
18 the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs.
19 Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking
20 with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the
21 amount of the bond or undertaking to be given. The court in which the action or proceeding is
22 pending may direct what disposition shall be made of such money pending the action or
23 proceeding. In a case where, by this section, the money is to be deposited with an officer, a
24 judge of the court, upon the application of either party, may, at any time before the deposit is
25 made, order the money deposited in court instead of with the officer; and a deposit made
26 pursuant to such order is of the same effect as if made with the officer. The perfecting of an
27 appeal by giving the undertaking mentioned in this section stays proceedings in the court below
28 upon the judgment appealed from; except when the sale of perishable property is directed, the
29 court below may order the property to be sold and the proceeds thereof to be deposited or
30 invested, to abide the judgment of the appellate court.

31 (a2) Except as provided in subsection (b) of this section, the amount of the undertaking
32 that shall be required by the court shall be an amount determined by the court after notice and



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Page 2 of 2

1 hearing proper and reasonable for the security of the rights of the adverse party, considering
2 relevant factors including the following:

3 (1) The amount of the judgment.

4 (2) The amount of the limits of all applicable liability policies of the appellant
5 judgment debtor.

6 (3) The aggregate net worth of the appellant judgment debtor.

7 (b) If the appellee in a civil action brought under any legal theory obtains a judgment
8 directing the payment or expenditure of money in the amount of twenty five million dollars
9 (\$25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the
10 period of time during which the appellant has the right to pursue appellate review, including
11 discretionary review and certiorari, the amount of the undertaking that the appellant is required
12 to execute to stay execution of the judgment during the entire period of the appeal shall be
13 twenty five million dollars (\$25,000,000).

14 (c) If the appellee proves by a preponderance of the evidence that the appellant for
15 whom the undertaking has been limited under ~~subsection~~ subsections (a2) and (b) of this
16 section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its
17 assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the
18 federal courts of the United States other than in the ordinary course of business, then the
19 ~~limitation-limitations~~ in ~~subsection~~ subsections (a2 and (b) of this section shall not apply and
20 the appellant shall be required to make an undertaking in the full amount otherwise required by
21 this section."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____